IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Bail Appl..No. 5943 of 2007()

CRIME NO. 96/07 OF ENATHU POLICE STATION

APPLICANT/ACCUSED NO.3

SHANAVAS, S/O.SHAMSUDEEN RAWTHER,
SHYLALAYAM, MANNADI THAZHATHU MURI,
MANNADI, KADAMPANADU VILLAGE,
ADOOR TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING THE S.I. OF ENATHU
POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 27/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 5943 of 2007

- -

Dated this the 27th day of September, 2007

O R D E R

Application for regular bail. The petitioner faces allegations under the Kerala Abkari Act. He is the third accused. Altogether there are five accused persons. The crux of the allegations is that 2310 litres of spirit was transported by the accused persons in furtherance of their design to distribute the same. The offence was detected on 14.9.2007. The petitioner was arrested on the same day and he continues in custody.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He prays that the petitioner may now be enlarged on bail, subject to appropriate terms and conditions.

3. The learned Prosecutor opposes the application. He submits that considering the nature of the offence alleged, the nature and quantum of the contraband liquor seized and the organised manner in which the crime has been committed, the State is obliged to oppose the application. Investigation is not complete. The Investigating

Officer may be given reasonable time to complete the investigation, submits the Prosecutor.

4. The learned counsel for the petitioner submits that there is a humanitarian side to the problem. The petitioner has received hall ticket from the Public Service Commission to appear for an examination at Pathanamthitta on 29.9.07. Subsequent information has been received that the said examination has been postponed to 1.10.007. The learned counsel submits that even if this court were pleased to dismiss the application, it may be ensured that the petitioner is permitted to appear for the said examination in peace, as that would have a bearing on his entire future and career.

5. The learned Prosecutor was requested to state whether the State has any objection in issuing appropriate directions to the petitioner to permit him to write the examination in peace. The learned Prosecutor does not oppose the said prayer. Appropriate directions may be issued, it is submitted.

6. I am satisfied that in view of the objection against grant of regular bail by the Prosecutor, bail can be granted to the petitioner only if this Court is in a position to entertain both the satisfactions contemplated under Section 41A of the Kerala Abkari Act. I am unable to entertain either of

those satisfactions now. In these circumstances this application deserves to be dismissed. However, I am satisfied, as requested by the learned counsel for the petitioner, that appropriate directions regarding grant of interim bail to enable the petitioner to appear for the said examination can be issued.

7. This application is accordingly dismissed. But it is made clear that the learned Magistrate shall release the petitioner at 5 p.m. on 29.9.2007 on condition that the petitioner executes a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate, undertaking to surrender back before the learned Magistrate at 11 a.m. on 3.10.2007. It shall be the duty of the learned Magistrate to ensure that appropriate communication/ intimation is given to the jail authorities such that the petitioner shall be released from the prison at 5 p.m. on 29.9.2007 to facilitate his appearance for the examination on 1.10.2007. The learned Magistrate shall report compliance to this Court.

8. Hand over the order.

(R. BASANT)
Judge

tm